UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

SAFET MASUKIC,   )
)
                Plaintiff,   )   No. 15cv2084 EJM
        vs.   )
)   ORDER
CAROLYN W. COLVIN,   )
ACTING COMMISSIONER OF   )
SOCIAL SECURITY,   )
)
                Defendant.   )

This matter is before the court on defendant's resisted Motion to Dismiss, pursuant to F.R.Civ.Pro. 12(b)(6), filed January 11, 2016. Granted.

This is an action seeking judicial review pursuant to § 1631(c)(3) of the Social Security Act, 42 U.S.C. §1383 (c)(3) of the final decision of the acting Commissioner of Social Security denying his application for disability insurance benefits (DIB) under the Act. Defendant claims that plaintiff filed this action too late, and that therefore it must be dismissed.

The Commissioner's final act was the denial of review by the Appeals Council on July 19, 2015. 42 U.S.C. §405(g) allows plaintiff to request judicial review within 60 days from receipt of the Appeals Council notice. Allowing five days for presumptive receipt of the Council's July 19, 2015 notice, plaintiff was required to file his action by September 22, 2015. He filed the first of his pleadings, a motion for leave to file his complaint in forma pauperis, on September 28, 2015.

Defendant in his "resistance" does not dispute any of this, factually or legally, but requests a stay to appeal to the Appeals Council. He already appealed to the Appeals

Council once, and was refused. He has not yet filed his second request. He has not filed a motion for a stay in this court, although required to do so if he wants one, under Local Rule 7.
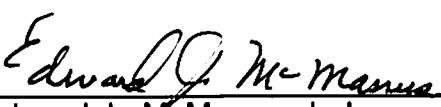
The U.S. Supreme Court has held that the 60 day requirement in 42 U.S.C. §405(g) is in the nature of a statute of limitations. <u>Bowen v. City of New York</u>, 476 U.S. 467, 478 (1986.) The Eighth Circuit has also upheld the 60 day time limitation, in <u>Hammonds v. Bowen</u>, 870 F.2d 446, 448 (8th Cir. 1989), and <u>Turner v. Bowen</u>, 862 F.2d 708, 710 (8th Cir. 1988.)

It is therefore

ORDERED

Granted. Dismissed.

March 11, 2016

Edward J. McManus, Judge
UNITED STATES DISTRICT COURT